Appendix

Evidence supporting Finding VII (R. 604) that all of plaintiff's cargo was loaded after defendant had knowledge of Pearl Harbor attack. (All references to *defense* evidence unless otherwise indicated.)

1. Time when knowledge was acquired.

The Circuit Court of Appeals says that defendant's New York Port Captain learned of the Pearl Harbor attack "sometime before 3:00 p.m. on the 7th." Captain Meredith's testimony is that he learned it between 1 and 2 P.M. on the 7th:

(R. 157-8):

"Q. When did you learn of the incident now called the attack on Pearl Harbor?

A. Mrs. Meredith called me up.

Q. At what time?

A. That I do not clearly remember; sometime in the afternoon.

Q. To the best of your recollection what time during the afternoon?

A. I think it was between 1:00 and 2:00 o'clock.

Q. Between 1:00 and 2:00 P.M.?

A. Yes."

2. Time of loading.

Plaintiff's Exhibit 12 (letter from H. J. Griffin, appellant's then Freight Traffic Manager):

(R. 361):

"The cargo in question was delivered to our Pier on December 6, 1941, and loaded into the subject vessel on December 8th."

Defendant's Exhibit P (Bill of Lading allegedly tendered but refused by plaintiff; facing R. 62, see also R. 479):

"Laden on Board Dec 8 1941 E. J. H."

The date "Dec 8 1941" was put on this document by defendant's agents. (R. 500b.) The initials "E.J.H." are the initials of defendant's employee and witness Elmer J. Hult. (R. 500b.) (The Circuit Court of Appeals overlooked this witness when it said at R. 673, ftn. 7a, that "all testimony for appellant except that of Griffin was by deposition".)

The loading was completed at noon of December 8. (Hennessy, R. 308.)

Had the loading been consecutive it would have been about a five-hour job. (Meredith, R. 168.)

(If nothing more were available it may reasonably be inferred that a job taking 5 hours all told, and completed at 12:00 noon on December 8th, was begun later than 2:00 or even 3:00 P.M. of the previous day.)

In answers to interrogatories defendant originally placed the time of commencement of loading at 1:00 P.M. on December 7th, and the time of completion at 5:00 A.M. on December 8th (R. 99, Ans. 28) a spread of 16 hours. Later the time of completion was corrected to 12:00 noon of the 8th. (Hennessy, R. 307-8.) Assuming the spread of 16 hours to be correct, this would place the time of commencement at 8:00 P.M. on December 7th.

The cargo being glassware, had to be stowed on top (so last, on each deck of each hold):

(Meredith, R. 169):

> "A. Glassware would come in the category of general cargo calling for top stowage, so that there would be no weight liable to break it."

One of the dock checkers explained away the dates "Dec 7 1941", appearing on dock checkers' freight-loading tally sheets which defendant introduced in evidence:

(Lanagan, R. 318-d):

> "* * * you see the way we generally work here, you start in say at 8 o'clock this morning, you work all night and you work all day the next day. So you might put a date on the tally, like say if we start this morning, I might put today's date on and just continue on the tally and it would go over to the next day, on the same tally."

The so-called "agreement" mentioned by the Circuit Court (R. 667) that loading started at 1:00 P.M. on the 7th was nothing more than a stipulation *by defendant* as to the earliest time *claimed by defendant* for the commencement of the loading:

(R. 591):

> "Mr. Morse. Yes, in that I can. I will stipulate that Mr. Ryan was in error when he stated that he loaded glassware prior to breakfast on December 7, and I will also make the statement to the Court that, not unlike some waterfront employees, he was somewhat intoxicated when the deposition was taken.

The Court. When do you say the record now shown, according to the defendant's testimony, the loading took place?

Mr. Morse. Commencing at one o'clock p.m. on December 7 and it was completed by noon of December 8—the glassware.

The Court. Do you want to dispute that?

Mr. Stetzer. In view of that statement, your Honor, I do not have to give any more concern about the matter if you so state."

At any rate, the stipulation was such that the trial judge could reasonably construe it as stated above.

Due service and receipt of a copy of the within is hereby admitted

this_____day of May, 1945.

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Attorneys for Respondent.